

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

ORDER

Babu Lal Vs. Board of Revenue for Rajasthan Ajmer & Others
(SB Civil Writ Petition No.997/1998)

SB Civil Writ Petition under Article
226 & 227 of the Constitution of India.

Date of order:

October 18, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. R. K. Agrawal, for the petitioner.

Mr. Rajesh Kapoor, for respondents.

BY THE COURT:

The question that requires my consideration in the instant writ petition is:-

Whether adopted son, immediately on his adoption constituted a Hindu Coparcenary along with his father and became entitled to half share in the ancestral properties?

2. Contextual facts depict that the respondent No.3 (for short 'plaintiff') preferred a suit in the year 1973 against the petitioner (for short 'defendant') and respondents No.2,4&5. It was pleaded in the plaint that the lands bearing khasra Nos.151, 153, 165 and 166 measuring 64 Bighas 10 Biswas in village Peepalada (Chinod) Tehsil Kishanganj were owned by her father Panna Lal. On his death the plaintiff and respondent Kanachan Bai,

being surviving legal heirs of Panna Lal acquired equal right, title and interest over the lands. The plaintiff averred that the defendant collusively got his name mutated in the revenue records claiming himself to be adopted son of Panna Lal and forcibly occupied the land. The plaintiff denied the adoption and sought her name along the name of Kanchan Bai be entered in the land records and name of defendant be deleted. She also claimed possession over the lands. The defendant filed written statement admitting khatedari of his adoptive father Panna Lal and claimed that he lawfully got his name mutated in the records of right. Defendant pleaded that he was lawfully adopted by Panna Lal and a will was also executed in his favour, bequeathing entire lands. On death of Panna Lal the petitioner succeeded to the property and his name was rightly mutated. The Assistant Collector Shahabad, on the basis of pleadings of the parties framed as many as 13 issues. The issues No.5 regarding adoption and No.6 regarding will were decided in favour of the defendant and vide judgment dated December 4, 1986 the suit of plaintiff was dismissed. On appeal filed by plaintiff the Revenue Appellate Authority Kota upheld the issue of adoption but reversed the finding in regard to execution of will. Consequently the appeal was allowed and suit of plaintiff was decreed. The second appeal filed by the defendant before Board of Revenue was also dismissed vide judgment dated September 18, 1996. The review petition against the judgment was also found devoid of merit. Hence this writ petition.

3. I have heard learned counsel for the parties.

4. In a similar situation the Apex Court in Anar Devi Vs. Parmeshwari Devi [JT 2006(12) SC 288] indicated thus:- (Para 11)

“Thus we hold that according to Section 6 of the Act when a coparcener dies leaving behind any female relative specified in Class I of the Schedule to the Act or male relative specified in that class claiming through such female relative, his undivided interest in the Mitakshara coparcenary property would not devolve upon the surviving coparcener, by survivorship but upon his heirs by intestate succession. Explanation 1 to Section 6 of the Act provides a mechanism under which undivided interest of a deceased coparcener can be ascertained and, i.e., that the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not. It means for the purposes of finding out undivided interest of a deceased coparcener, a notional partition has to be assumed immediately before his death and the same shall devolve upon his heirs by succession which would obviously include the surviving coparcener who, apart from the devolution of the undivided interest of the deceased upon him by succession, would also be entitled to claim his undivided interest in the coparcenary property which he could have got in notional partition.”

It was further observed as under:- (Para 12)

“In the case on hand, notional partition of the suit properties between Nagarmal and his adopted son Nemi Chand has to be assumed immediately before the death of Nagarmal and that being so Nagar Mal's undivided interest in the suit property, which was half, devolved on his death upon his three children, i.e., the adopted son Nemi Chand and the two daughters who are plaintiffs in equal proportion, Nemi Chand, the adopted son, would get half of the entire property which right he acquired on the date of adoption and one third of the remaining half which devolved upon him by succession as stated above. This being the position, each of the two plaintiffs was not entitled to one-third share in the suit property, but one-sixth and the remaining properties would go to the adopted son, Nemi Chand.”

5. Indisputably, the suit properties in the hands of Panna Lal were ancestral one in which his son Babu Lal got interest equal to Panna Lal after his adoption and from the date of adoption, a Coparcenary was constituted between the father and the adopted son. Upon the death of Panna Lal, the property being ancestral, the half undivided interest of Panna Lal therein devolved by rule of succession upon his three heirs, including Babu Lal. Consequently Babu Lal is entitled to $\frac{1}{2}$ share of the ancestral property along with his adoptive father and after the death of adoptive father he will get $\frac{1}{3}$ share out of the $\frac{1}{2}$ share of the adoptive father.

6. The Board of Revenue and Appellate Authority did not properly appreciate this legal position and committed illegality in rendering the impugned judgments.

7. For these reasons, I allow the writ petition and set aside the impugned judgments and decrees of Board of Revenue and Revenue Appellate Authority. While upholding the judgment and decree dated December 4, 1986 of the Assistant Collector Shahbad, I dispose of the suit instituted by the plaintiff as indicated above. There shall be no order as to costs.

(Shiv Kumar Sharma)J.